

Bill Owens *Governor*

Stacy L. Worthington *Board Director*

DPA

Department of Personnel
& Administration

Meeting Minutes February 18, 2003 State Personnel Board The Chancery 1120 Lincoln St., Suite 1420 Denver, Colorado 80203 Phone (303) 894-2136 Fax (303) 894-2147

The State Personnel Board met in public session on Tuesday, February 18, 2003, at the Colorado Department of Transportation, 4201 East Arkansas Avenue, Second Floor Auditorium, Denver, Colorado 80222.

The meeting was called to order by Acting Chair John Zakhem at approximately 9:05 a.m. In addition to Mr. Zakhem, Board members Diedra Garcia and Linda Siderius were present in person. The following Board members were present via telephone: Joyce Lottner and Elizabeth Salkind.

Stacy L. Worthington, Board Director; First Assistant Attorney General Richard Forman, Board Counsel; and Jane Sprague, Legal Assistant, were also present.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

Troy A. Eid, Executive Director, Department of Personnel and Administration (DPA), gave a brief report to the Board. Mr. Eid thanked the Board for its support of his tours and visits to Canon City, Pueblo, Limon, Arkansas Valley, Otero Junior College, Fort Lyon, Glenwood Springs, Grand Junction, and Durango.

He stated that 300 layoffs was the biggest challenge of the fiscal year and reported that the legislature is putting "finishing touches" on the total compensation bill to be introduced by Lola Spradley, a bill to expand the privatization statute and make it more flexible, and bills relative to the budget. Jeff Schutt then clarified that of the 300 positions abolished, some were demotions and some were lost jobs.

CONTINUATION OF RULE-MAKING - This portion of the Board meeting was tape-recorded.

A. State Personnel Board in conjunction with Department of Personnel and Administration - Board Rules pertaining to the Senior Executive Service (SES)



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Board Rules R-4-11; R-6-2; R-7-7; R-8-5; R-8-20; R-8-45; R-8-52; R-8-68; and R-8-69

B. State Personnel Board

Board Rules R-1-4; R-1-9; R-1-11; R-4-11(A); R-6-4; R-6-9; R-6-10; R-6-12; R-7-12; R-7-13; R-7-21; R-8-20; R-8-22; R-8-30; R-8-32; R-8-38; R-8-42; R-8-45; R-8-46; R-8-49; R-8-53; R-8-54; R-8-58; R-8-60; R-8-62; R-8-63; R-8-65; and R-8-67

It was noted that written comments received relative to the above rules (Sections A and B) are attached to the minutes of the January 21, 2003 Board meeting as Attachment A.

In conjunction with Department of Personnel and Administration pertaining to Senior Executive Service (SES), Mr. Zakhem, and Troy A. Eid, Executive Director, Department of Personnel and Administration (DPA), conducted the February 18, 2003 rulemaking to consider the following rules pertaining to SES:

R-4-11: Amendment to remove reference to SES.

R-6-2: Amendment to remove language exempting SES employees from progressive discipline.

R-7-7: Amendment to remove language that denies SES employees rights in layoff.

R-8-5: Amendment to remove language that prohibits SES employees from filing grievances.

R-8-20: Amendment to remove language that prohibits SES employees from filing petitions for declaratory order.



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R-8-45: Amendment to remove language that limits appeal rights of employees in SES.

R-8-52: Amendment to clarify appeal rights of employees in the SES.

R-8-68: New provision to clarify waiver of certain rights and eligibility for certain privileges upon acceptance of an SES pay plan.

R-8-69: New provision to permit employees in SES prior to June 1, 2003, to revert to traditional pay plan with all rights of employees in classified service.

Following a short statement by Mr. Eid, the Board members voted on proposals for the SES rules. The following chart reflects the vote of the Board on each of the above rules. A copy of the rules as adopted is attached as ATTACHMENT A to these minutes.

<u>Rule</u>	Board Action
R-4-11	Ms. Siderius moved to adopt the rule as proposed, with
	Alternative 2. Ms. Lottner seconded the motion. The
	motion passed on the affirmative vote of the following
	Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Ms.
	Lottner, and Mr. Zakhem.
R-6-2	Ms. Siderius moved to amend R-8-20 as proposed by
R-7-7	adding the words, "all of" to the last sentence of R-8-20 to
R-8-5	read, "The Board may deny any petition that does not
R-8-20	contain all of this information," to adopt the rule as
R-8-45	amended, and to adopt all other rules as proposed. Ms.
R-8-52	Lottner seconded the motion. The motion passed on the
R-8-68	affirmative vote of the following Board members: Ms.
R-8-69	Garcia, Ms. Salkind, Ms. Siderius, Ms. Lottner, and Mr.
	Zakhem.

Ms. Siderius moved to permanently adopt the amendments to the noticed rules, with the following findings:



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- The record of the rule-making proceeding demonstrates the need for the rules and such rules.
- The proper statutory authority exists for the rules.
- To the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any party required to comply with the rules.
- The rules do not conflict with other provisions of the law.
- The duplication or overlapping of the rules, if any, has been explained by the Board.

Ms. Lottner seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Ms. Lottner, and Mr. Zakhem.

Ms. Garcia moved to adopt the proposed Statement of Basis and Purpose, as amended, attached as ATTACHMENT B to these minutes. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Ms. Lottner, and Mr. Zakhem.

I. REQUESTS FOR RESIDENCY WAIVERS

A. February 1, 2003 Report on Residency Waivers

The Director granted one residency waiver during the preceding time period. The waiver allows the Colorado Department of Transportation to recruit out-of-state for its Chief Engineer.

II. PENDING MATTERS

A. Department of Natural Resources Letter re Modification of Retention Areas.



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Ms. Siderius moved to grant the request of the Department of Natural Resources to limit retention areas as follows: laid off or displaced employees may bump to any vacant position in the Department for which the employee qualifies, but bumping of occupied positions in divisions is limited to the following major organizational units: Executive Director's Office, Division of Wildlife, Division of Parks and Outdoor Recreation, Division of Water Resources, Colorado Water Conservation Board, State Board of Land Commissioners, Colorado Oil and Gas Conservation Commission, Division of Minerals and Geology, and Division of Forestry. The limitation is effective until June 30, 2003. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Salkind voted in opposition to the motion.

- III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD
 - A. <u>Hubert Barton v. Department of Public Safety, Colorado State Patrol,</u> State Personnel Board case number 2002B084.

Ms. Salkind moved: (1) to grant Complainant's request for the return of exhibits but only after dismissal and time for appeal has passed and the parties have filed a joint motion requesting return of exhibits; and (2) to deny Complainant's request to seal the record. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Ms. Lottner, and Mr. Zakhem.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING



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A. <u>David S. Dumler v. The Board of Governors of the Colorado State University,</u> State Personnel Board case number 2003G044.

Ms. Siderius moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Lottner seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Ms. Lottner, and Mr. Zakhem.

B. <u>Manuel Sanchez v. Department of Human Services</u>, State Personnel Board case number 2003G063.

Director Worthington recused herself from participation in the discussion of this case. Legal Assistant Sprague called the case number and the vote in lieu of the Director.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Director and deny the petition for hearing. Ms. Lottner seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Ms. Lottner, and Mr. Zakhem.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES

A. <u>Michael Fowler v. Department of Higher Education, Trustees of the State Colleges in Colorado, Western State College,</u> State Personnel Board case number 2002B144.

On January 14, 2003, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's disciplinary termination of Complainant was arbitrary, capricious or contrary to rule or law. The ALJ ordered that Respondent's disciplinary termination be rescinded.



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Complainant shall be reinstated to his former Custodian II position with back pay and benefits, less the appropriate offsets. Respondent shall pay to Complainant the amount of his attorney fees and costs incurred in the pursuit to his appeal action.

B. <u>Dennis Birk v. Community Colleges in Colorado, Arapahoe Community College</u>, State Personnel Board case number 2003B055.

On January 29, 2003, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's disciplinary termination of Complainant was arbitrary, capricious or contrary to rule or law. The ALJ ordered that Respondent's disciplinary termination action be reversed. A disciplinary suspension of 30 days is substituted for the termination. Complainant shall be reinstated to his former position with back pay and benefits, except for the period of suspension and any income Complainant earned but would have earned if his employment with Respondent had not been terminated.

VI. REVIEW OF THE MINUTES FROM THE JANUARY 21, 2003 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Ms. Siderius moved to approve the minutes of the January 21, 2003 meeting as submitted. Ms. Lottner seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, Ms. Siderius, Ms. Lottner, and Mr. Zakhem.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JANUARY 21, 2003 PUBLIC MEETING:

A. Robert Terry v. Department of Public Health & Environment, State Personnel Board case number 2001G051.



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The Board voted to deny Complainant's Motion for Order Vacating the Board's Order of October and for Reconsideration of Substance of Order Remanding to the ALJ. The Board's October 23, 2002 order stated, "The case is to be remanded to the Administrative Law Judge 'for the purpose of allowing complainant and Hobbs and opportunity to present evidence on the issue of attorney fees.'

B. <u>Irene Cornett v. Department of Corrections, Centennial Correctional Facility</u>, State Personnel Board case number 2003G047.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing.

C. <u>Lowell O. Ferrel v. Department of Corrections, Sterling Correctional Facility</u>, State Personnel Board case number 2000B092.

The Board voted to adopt the Preliminary Recommendation of the Director and deny petition for hearing, concluding that although the Court of Appeals found that Complainant's disclosures fell within the purview of the Whistleblower Act, the Director subsequently found that the appointing authority did not retaliate against Complainant as a result of the disclosures, and thus did not violate C.R.S. § 24-50.5-101 *et seq*.

D. <u>Jean Connolly v. Department of Corrections, Centennial Correctional Facility</u>, State Personnel Board case number 2003G043.

The Board voted to adopt the Preliminary Recommendation of the Director and deny the petition for hearing.

E. <u>Bradley A. Goodman v. Department of Corrections, Colorado Territorial Correctional Facility</u>, State Personnel Board case number 2003G020.



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The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

F. Rose Martinez v. Department of Corrections, State Personnel case number 2002G063.

The Board voted to adopt the Preliminary Recommendation of the Director and deny the petition for hearing.

G. <u>Harlen Ainscough v. Department of Public Health and Environment, Hazardous Materials & Waste Management Division</u>, State Personnel Board case number 2003G032.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing

H. <u>Kathi L. Dean v. Department of Corrections, Denver Reception Diagnostic</u> Center, State Personnel Board case number 2003G015.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Budget Report and Revenue and Expense Report
- Cases Scheduled for Preliminary Review
- Cases on Appeal to the Board and to Appellate Courts
- Mandate; Order Affirmed in <u>Ramirez v. Department of Corrections</u>, State Personnel Case No. 99B153, Court of Appeals No. 01CA1248



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B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

X. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the January 2003 Executive Session

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Having no more business, the meeting adjourned by consensus.

APPROVED THIS 18th DAY OF MARCH, 2003.

John Zakhem, Acting Chair
Joyce Lottner, Chair
Diedra Garcia, Member
Elizabeth Salkind, Member
Linda Siderius, Member



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ATTACHMENT A - RULES ADOPTED BY THE BOARD ON FEBRUARY 18, 2003



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ATTACHMENT B - STATEMENT OF BASIS AND PURPOSE ADOPTED BY THE BOARD ON FEBRUARY 18, 2003